



8421-03

NATIONAL COUNCIL ON DISABILITY

5 CFR Part 10000

RIN 3480-AA01

Freedom of Information Act

AGENCY: National Council on Disability

ACTION: Final rule.

SUMMARY: The National Council on Disability (NCD) issues a final rule amending its Freedom of Information Act (FOIA) regulations to integrate required statutory mandates enacted by the FOIA Improvement Act of 2016 (The Improvement Act). These changes include a longer timeframe to file an appeal for administrative appeals and additional resources for dispute resolution services. Additionally, NCD issues this final rule so as to include comments which were submitted for NCD's existing FOIA regulations. But due to issues beyond NCD control, NCD did not receive the comments until after publication of the final rule.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Joan Durocher, General Counsel,
National Council on Disability, at 202-272-2004 or jdurocher@ncd.gov.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this final rule is to amend several substantive and procedural provisions in NCD's FOIA regulation.¹ The Improvement Act requires NCD to amend its FOIA regulations to extend the deadline for administrative appeals, to add information on dispute resolution services, and to amend NCD's fee structure. Additionally, NCD issues this final rule to amend its regulations so as to integrate comments that were submitted regarding NCD's original FOIA regulations but were not received until after publication of the final rule. NCD will integrate some of the commenter's remarks in this final rule.

II. Section by Section Analysis of Amendments to 5 CFR Part 10000

For the reasons discussed above, NCD amends 5 CFR part 10000 as follows:

A. Section 10000.2

We revise §10000.2 by:

1. Changing the word "requestors" to "requesters" in paragraphs (1) and (2) of the "requester category" definition.

B. Section 10000.6

We revise §10000.6 by:

1. Changing "FOIA Officer" to "Chief FOIA Officer" in paragraph (b)(3); and
2. Adding NCD's FOIA Public Liaison and the Office of Government Information Services to the list of offices available to offer dispute resolution services in paragraph (b)(5); and
3. Changing "the Council shall determine whether another agency of the federal government..." to "the Council shall determine whether another agency or entity of the federal government..." in paragraph (c).

C. Section 10000.7

¹ 80 FR 49117, August 17, 2015.

We revise §10000.7 by:

1. Adding the option to appeal by email in paragraph (a).
2. Changing the appeals deadline from 60 days to 90 days in paragraph (b); and
3. Adding NCD's FOIA Public Liaison and the Office of Government Information Services to the list of offices available to offer dispute resolution services in paragraph (c); and
4. Changing the word "disputes between FOIA requestors" to "between FOIA requesters" under paragraph (c).

D. Section 10000.8

We revise §10000.8 by:

1. Changing "FOIA Officer" to "Chief FOIA Officer" in paragraph (h)(4).

III. Statutory Authority

1. The authority citation for parts 10000 is as follows:

Authority:

5 U.S.C. 552, as amended; E.O. 12600, 52 FR 23781, 3 CFR 1987, 1987 Comp., p. 235;
3 CFR part 235.

IV. Regulatory Analysis

We have determined that the amendments mandated by the Improvement Act involve agency management and technical changes. Therefore, the amendments do not constitute a rulemaking under the Administrative Procedure Act (APA), 5 U.S.C. 551, 553 (a)(2).

Under the APA, the public may participate in the promulgation of rules that have a substantial impact on the public. The amendments to our regulations relate to agency

management and technical changes only and are required by statute, and therefore, do not require public participation.

Even if these amendments were a rulemaking under 5 U.S.C. 551, 553(a)(2) of the APA, we have determined that notice and public comment are unnecessary and contrary to the public interest. Under 5 U.S.C. 553(b)(B) of the APA, an agency may publish regulations in final form when the agency for good cause finds the notice and public procedure thereon impracticable, unnecessary, or contrary to public interest. The amendments are required by statute, are not a matter of agency discretion, and provide additional protections to the public through the existing regulations. Thus, notice and public procedure are impracticable, unnecessary, and contrary to the public interest.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 601 et seq.), generally requires an agency to prepare a regulatory flexibility analysis for any rule subject to notice and comment rulemaking under the APA or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions. The Council considered the effects on this final rule on small entities and certifies that these final rules will not have a significant impact on a substantial number of small entities.

List of Subjects in 5 CFR Part 10000

Administrative practice and procedure, Confidential business information, Freedom of information, Privacy, Procedures for disclosure of records under the Freedom of Information Act.

For the reasons discussed in the preamble, NCD amends 5 CFR part 10000 as follows:

Part 10000--PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE
FREEDOM OF INFORMATION ACT

1. The authority citation for part 10000 continues to read as follows:

Authority: 5 U.S.C. 552, as amended; E.O. 12600, 52 FR 23781, 3 CFR 1987, 1987
Comp., p. 235; 3 CFR 235.

2. Amend §10000.2 by revising paragraphs (1) and (3) of the definition for
“Requester category” to read as follows:

§10000.2 Definitions.

Requester category * * *

(1) Commercial requesters;

(3) All other requesters.

3. Amend §10000.6 by revising paragraphs (b)(3) and (5) and the first sentence of
paragraph (c) introductory text to read as follows:

§10000.6 Responsibility for responding to requests.

(b) ***

(3) A brief statement of the reason(s) for the denial, including any FOIA exemption
applied in denying the request. The Chief FOIA Officer will indicate, if technically
feasible, the amount of information deleted and the exemption under which a deletion is

made on the released portion of the record, unless including that indication would harm an interest protected by the exemption;

(5) A statement of the right to seek dispute resolution services from NCD's FOIA Public Liaison and the Office of Government Information Services.

(c) Consultation, referral, and coordination. When reviewing records located by the Council in response to a request, the Council shall determine whether another agency of the Federal Government or entity is better able to determine whether the record is exempt from disclosure under the FOIA and, if so, whether it should be released as a matter of discretion. ***

4. Amend § 10000.7 by revising paragraph (a), the first sentence of paragraph (b), and the fifth sentence of paragraph (c) to read as follows:

§10000.7 Administrative appeals.

(a) You may appeal an adverse determination related to your FOIA request, or the Council's failure to respond to your FOIA request within the prescribed time limits, by email at FOIA@ncd.gov, or write to the Executive Director, National Council on Disability, 1331 F Street, NW, Suite 850, Washington, DC 20004.

(b) Your appeal must be in writing and must be postmarked or electronically received by the Executive Director within 90 days of the date of the letter denying your request, in whole or in part. ***

(c) ***A requester may also seek dispute resolution services from NCD's FOIA Public Liaison and OGIS. ***

5. Amend § 10000.8 by revising the first sentence of paragraph (h)(4) to read as follows.

§10000.8 Timeframe for Council's response to a FOIA request or administrative appeal.

(h) ***

(4) The Chief FOIA Officer will decide whether to grant or deny your request for expedited processing and notify the requester within ten calendar days of receipt. ***

Dated: December 14, 2016.

Rebecca Cokley,

Executive Director.

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